

Office Supreme Court, U.S.

F I L E D

DEC 18 1982

ALEXANDER L. STEVENS,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES

ROLF BETKA,)
Plaintiff-Appellant,)
vs.)
STATE OF OREGON, RICHARD B.)
SPOONER, HOWARD CLYMAN,)
DOUGLAS S. ROBERTSON, GARY R.)
OLSEN, BOARD OF EDUCATION OF)
WEST LINN HIGH SCHOOL)
DISTRICT NO. 3J, and LARRY G.)
HIBBARD,)
Defendants-Appellees.)
No. 82-5754
ON APPEAL FROM THE UNITED
STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
MOTION TO DISMISS OR AFFIRM
TERM: OCTOBER 1982

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Of Attorneys for Defendants-
Appellees West Linn High School
District No. 3J and Larry G.
Hibbard

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Appellees, West Linn High School District No. 3J and Larry G. Hibbard, move the Court for an order dismissing the appeal herein or in the alternative to affirm the order of the United States Court of Appeals for the Ninth Circuit pursuant to Supreme Court Rule 16.

I

PROCEDURAL BACKGROUND

Plaintiff filed his complaint on or about January 22, 1981 presumably attempting to allege a variety of claims for violation of his civil rights. Defendants responded with motions to dismiss for failure to state a cause of action or motion for summary judgment. Plaintiff filed additional documents. Magistrate Juba entered Findings and Recommendations recommending one defendant be granted summary judgment and that plaintiff's action be dismissed as to the other defendants including West Linn School District No. 3J and Larry G. Hibbard.

Plaintiff filed additional documents including objection to the Findings and Recommendations of June 24, 1981. The objections claimed both a conspiracy and violations of plaintiff's rights.

On July 30, 1981, United States District Judge Helen J. Frye entered an order consistent with Magistrate Juba's recommendations dismissing plaintiff's action.

Numerous documents requesting reconsideration and rehearing were filed by plaintiff. All of them were denied. Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals on October 27, 1981.

On January 4, 1982, Judge Frye ordered plaintiff to file cost bonds on the ground that his appeal was deemed frivolous and not in good faith. Plaintiff filed further documents in both the

District and Appellate Courts. A number of the defendants moved to dismiss plaintiff's appeal. On February 16, 1982, the Ninth Circuit Court of Appeals ordered the parties to submit statements discussing the Ninth Circuit's jurisdiction over the appeal. The Court of Appeals then ordered dismissal of plaintiff's appeal on the grounds that the appeal had not been timely filed and plaintiff had failed to file the necessary cost bonds.

II

THE PROCEEDING IS FRIVOLOUS

The allegation directed against West Linn High School District No. 3J and Larry G. Hibbard, Principal of West Linn High School, appears to contend that the School District, by engaging in "undocumented teachings" alienated the plaintiff from his children.

Magistrate Juba found that the allegation against Hibbard and the School District did not state a claim for violation of any rights, privileges or immunities secured by either the Constitution or Federal Law and that alienation of children's affection was not a claim that could be brought under either Federal Law or the Constitution.

III

THERE IS A DEFECT IN JURISDICTION

Appellant invokes the jurisdiction of this court under 28 USC § 1252 which provides:

"any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee is a party."

While there was a final order of the court of the Ninth

Circuit Court of Appeals, there was no order from any court holding any Act of Congress unconstitutional. Further, neither the United States or any agencies, or any officer or employee thereof was a party to appellant's complaint.

IV

CONCLUSION

Appellees West Linn High School District No. 3J and Larry Hibbard respectfully request the court to dismiss plaintiff's appeal or to affirm the Ninth Circuit Court of Appeals' order for the following reasons:

1. Appellant failed to state a claim for relief in the District Court;
2. This entire proceeding is frivolous;
3. His appeal was properly dismissed by the Ninth Circuit Court of Appeals on the grounds that it had not been timely filed and appellant had failed to file a cost bond as ordered by the District Court;
4. The jurisdiction invoked by appellant does not apply to the case at hand.

HIBBARD, CALDWELL, BOWERMAN,
SCHULTZ & HERGERT

By /s/ Donald B. Bowerman
Donald B. Bowerman OSB# 59011
Of Attorneys for Defendants
West Linn School District No. 3J
and Larry G. Hibbard

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DISTRICT NO. 3J, and LARRY G.)
HIBBARD,)
Defendant-Appellees.)
STATE OF OREGON)
County of Clackamas) ss.

I, DONALD B. BOWERMAN, being first duly sworn, depose and say:

I am one of the attorneys for defendants-appellees West Linn School District No. 3J and Larry G. Hibbard.

On November 16, 1982, plaintiff-appellant's Jurisdictional Statement was received by me.

On December 15, 1982, a true and correct copy of the foregoing Motion to Dismiss or Affirm was served on each of the following individuals by depositing same in the United States mail in Oregon City, Oregon, enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

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Plaintiff-Appellant

/s/ Donald B. Bowerman
DONALD B. BOWERMAN

SUBSCRIBED AND SWORN to before me this 15th day of December,
1982.

/s/ Paddy K. Reddaway
Notary Public for Oregon
My Commission Expires: 11/22/85